Dissent of Commissioners Loretta Lynch and Carl Wood

PG&E Biomass contracts

These contracts first came before the Commission in October of 2003. At the time, we had concerns about the expedited process used to approve the contracts and the decision to keep confidential critical elements of the proposals – including the contract price and terms. PG&E had argued that one of the plants, the Madera plant, had already shut down and faced staff layoffs without a contract, but PG&E did not demonstrate that the Sierra and Dinuba contracts required expedited approval – indeed, at the time, those plants had short-term contracts with other buyers. Nevertheless, PG&E argued that it was not yet obligated under the RPS to hold a competitive solicitation because it was not yet creditworthy and a majority of the Commission agreed.

In the nine months that have elapsed since that time, much has changed. Most importantly, the Commission has now completed our guidelines for the utilities' renewable resource solicitations. PG&E has a renewable solicitation process that has been approved by Director Clanon and is ready to go with the approval of the Least Cost Best Fit decision also on today's agenda. We believe that is unfair to other potential renewable projects, and compromises the credibility of our RPS process, to approve the continuation of these bilateral agreements on the very eve of PG&E's RPS solicitation. In the resolution issued last October, Energy Division also highlighted its disappointment with the lack of diversity in PG&E's proposed contracts. What better opportunity than through PG&E's

current competitive solicitation to expand its renewable portfolio diversity?

PG&E's creditworthiness has similarly undergone substantial change over the last nine months. Surely that argument cannot be applied now.

Unfortunately, what hasn't changed in nine months is the veil the Commission continues to draw over these contracts. We continue to maintain that the public has a right to know the full details and analysis behind our decisions. Absent that disclosure, any such decision is flawed.

Last October, the facilities offering these three contracts argued that they should be treated the same as other parties and counterparties for competitive purposes. We could not agree more. The Commission should require them to participate in a competitive solicitation subject to the same bidding, evaluation and disclosure rules it has developed over the last eight weeks in the Renewable Portfolio Rulemaking, and not continue to approve special projects outside the process it has established specifically for evaluating such contracts.

For these reasons, we dissent.

Dated July 8, 2004, at San Francisco, CA.

/s/_Loretta M. Lynch_____
Loretta M. Lynch
Commissioner

/s/Carl Wood_____
Carl Wood
Commissioner